Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1995

AUGUSTUS J. SIMMONS,

Petitioner,

v.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
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QUESTION PRESENTED

Question presented for review is the validity of an extra judicial, ex parte, "Judgment Attachment" of real property, by private parties, in obligation of federal grant agreements, for federal navigational airport purposes, where it clearly appears by the record itself that the extra-judicial judgment was rendered without jurisdiction either of the subject matter or of the parties of the defendant or in actions purely or *quasi in rem* of his property, prior to and without citation, service of process or publication of notice to necessary parties (cf. *Pennoyer v Neff*, 95 U.S. 714), or, return of service to the court of competent jurisdiction, and, rendered under plaintiff's private tort action, * (Special Act #170 – 1969), without constitutionally mandated compensation made or adequately secured to the owner of private property taken for public "AIRPORT" use, and, where the question of invalidity of said judgment for want of jurisdiction in the impeachment proceeding was put before the Supreme Court of Connecticut, said petition was denied, without hearing, with "MISDIRECTED" sanctions.

* In relevant part, Special Act #170 (1969), creator of *Simmons v Wetherall*, Docket # 163875 (1970) reads:

AN ACT AUTHORIZING AUGUSTUS J. SIMMONS TO SUE THE STATE.

QUESTIONS PRESENTED – Continued

Augustus J. Simmons of Windsor is authorized to bring an action at law against the state not later than the first Tuesday of January, 1970, and to recover such damages as may be awarded to him by said court for loss of use of land owned by him in accordance with this act shall be brought to the Superior Court for Hartford County and no costs or interest shall be included in any judgment against the state.

Approved May 28, 1969.

PARTIES TO PROCEEDING

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Augustus J. Simmons, Landowner

Respondents:

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OPINION BELOW

Plaintiff's request to the Chief Clerk, Supreme Court of Connecticut, requesting review of the denial of impeachment at the Superior Court level, Hon. Michael R. Sheldon, pursuant to Practice Book Section 4024 is printed at Appendix *A*.

The order on petition for certification to review to the Supreme Court of Connecticut pursuant to Section 4024 of the Practice Book was denied, with an order on petition for certification to appeal from the Appellate Court (AC 15481), dated June 17, 1996, is printed at Appendix *B*.

An additional order imposing restrictive sanctions against Attorney Otto Witt who filed an appearance on plaintiff's behalf on December 26, 1995, and is dated June 20, 1996 is printed at Appendix *C*.

STATEMENT OF JURISDICTION

This court has authority to reexamine the order on petition for certification to appeal to the highest court of a state, rendered in an "IMPEACHMENT" proceeding to acquire private property for public "AIRPORT" use, in which an arbitrary plan to transmogrify plaintiff's tort action against the state, #163875, into an eminent domain action on behalf of the state, in lieu of initiating proceedings under the eminent domain statutes (C.G.S. § 48-12 and § 8-129). Such proceedings were in violation of the clause of the Fourteenth Amendment, forbidding a state to deprive any person of property without due process of law, and which ground of objection was repeated to the

highest court of the state; provided the extra-judicial judgment of private counsel by its necessary operation was adverse to the claim of federal right and could not rest upon any independent ground of local law.

STATUTE AND CONSTITUTIONAL PROVISIONS

The Constitution of Connecticut provides that – "no person shall be deprived of life, liberty or property, without due process of law." Art. I § 11.

It also provides: Private property shall not be taken or damaged for public use without just compensation.

C.G.S. § 48-17 a, b, c.

Connecticut General Statutes also provide that where federal-state grant agreements for acquisition of the subject real property were entered into in 1955 (9-06-009-5078), that Connecticut General Statute 13b-50, Sec. (d) is determinative of subject matter jurisdiction. Sec. (d) reads in part:

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities made by the commissioner, shall, where such acquisition, construction, improvement, enlargement, equipment or operation is financed wholly or partly with federal monies, the commissioner, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules and regulations made thereunder, notwithstanding any other state law to the contrary.

The laws of the United States, referenced in C.G.S. 13b-50, Sec. (d), and, the laws of the United States mandated by Section 213 (42 U.S.C. 4633) of the Uniform Real Property Acquisition Act, P.L. 91-646 (1971) as amended P.L. 100-17 (1987), applicable and controlling, are 49 C.F.R., Part 24, Subpart B.

PETITION FOR WRIT OF CERTIORARI

The petitioner, Augustus J. Simmons, respectfully prays a writ of certiorari issue to review the denial of a petition for review of an impeachment proceeding, whereby private property is taken for a navigational servitude by a federal agency, Federal Aviation Administration, by private parties for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such proceeding by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.

STATEMENT OF THE CASE

On December 15, 1960, Petitioner Augustus J. Simmons was in receipt of a letter from the Department of Aeronautics of the State of Connecticut wherein the State, in conjunction with the Federal government, entered into an agreement in 1955 for the acquisition of land for "doolittle clear zones" on both ends of Runway 6-24 at

Bradley International Airport located in northern Connecticut. A portion of petitioner's land is located in the doolittle clear zone and was, starting in 1962, invaded and appropriated by the federal agency, Federal Aviation Administration (F.A.A.), with the erection of permanent navigational instrumentation on the surface of the property to control air traffic in and around the navigable airspace of the airport.

Starting with February 28, 1962, service was made upon Anastasia Simmons, mother and predecessor in title, of a condemnation of certain real property to be used for federal instrumentation, without compensation or deposit with the court. In retrospect, even though the procedures used by the state agency were, in due course, ruled illegal, null and void, it served the purpose and the means by which the federal agency, (F.A.A.), was able to engage in "major federal action" with the installation of permanent instrument landing system lights until 1974 when the system was upgraded with the installation of a "middle marker" and thus began the servitude imposed upon the landowner, without compensation – up to the present date.

It was not until the year 1981 that petitioner was able to determine, through "freedom of information" and other sources, the "1955" agreement, referenced in first paragraph, was a federal grant agreement, #9-06-009-5708, between the United States of America and the sponsor, State of Connecticut, wherein:

The administrator for and on behalf of the United States, hereby offers and agrees to pay as the United

States share of costs incurred in accomplishing the project, fifty percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this offer shall be $37 000.00 (1955).

2. The sponsor shall

a) Begin accomplishment of the project within a reasonable time after acceptance of this offer, and

b) Carry out and complete the project in accordance with the terms of this offer, and the Federal Airport Act and the regulations promulgated thereunder by the administrator in effect on the date of this offer, which act and regulations are incorporated herein and made a part hereof, and

c) Carry out and complete the project in accordance with the plans and property map incorporated herein as they may be revised or modified with the approval of the administrator or his duly authorized representative.

Judicial intervention is appropriate and necessary to vindicate the purposes of the Uniform Real Property Acquisition Act, P. L. 91-646 (1971) as amended, (42 U.S.C. 4601-4655), mandatory on all states no later than July 1, 1972.

Under 49 C.F.R. § 24.1 Purpose:

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42

U.S.C. 4601 et seq), in accordance with the following objectives, a,b,c.

Under § 24.102 Basic Acquisition Policies, Sec. (b) Notice To Owner reads: As soon as feasible, the owner shall be notified of the agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part.

It follows that if a court has never acquired jurisdiction over a defendant or the subject matter, failure to abide by time limits is of no consequence whatever, since any judgment ultimately entered is void and subject to vacation or collateral attack. *Bartels v International Commodities Corp.*, 435 F. Supp. 865 (1967).

The real property that is the subject of this impeachment proceeding has been petitioned to the United States Supreme Court in 1994 (#94-1651) and in 1992 (#92-1762).

REASONS FOR GRANTING THE WRIT

1. **The opinions and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court, where the lack of final decisions, final judgments, and a record of "no record" in Docket #163875, no valid execution can be issued thereon against the property or the defendant/plaintiff.**

A challenge to subject matter jurisdiction, an allegation that a judgment is "VOID" – "can be raised at any time – and the lack thereof cannot be waived." *Labow v Labow*, 171 Conn. 433, 440, 370 A2d 990 (1976); *Connecticut*

Steel Co. v National Amusements Inc., 166 Conn. 255, 263, 348 A2d 658 (1974); *Karp v Urban Redevelopment*, 162 Conn. 525, 528, 294 A2d 633; *Carten v Carten*, 153 Conn. 603, 610, 219 A2d 711; *Potter v Appleby*, 136 Conn. 641, 643, 73 A2d 819; *Maltbie*, Conn. App. Proc. § 45.

A "final decision" generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *St. Louis, I. M. & S. R. Co. v Southern Express Co.*, 108 U.S. 24, 28.

Ordinarily, in condemnation proceedings appellate review may be had only upon an order or judgment disposing of the whole case, adjudicating all rights, including ownership, and, just compensation as well as the right to take the property. This has been the repeated holding of decisions by the United States Supreme Court.

Citing *Catlin v United States*, 324 U.S. at 229 reads:

The rule applies to review by this court of judgments of state courts, in advance of determination of just compensation, although by local statute "judgments of condemnation," i.e., of the right to condemn particular property are reviewable before compensation is found and awarded. (citations.)

In the case at bar, the record is eminently clear that plaintiff rejected, rebuffed all "fraudulent offers," refused to tender any deeds, submitted two (2) written "pink slips", "dismissal notices" to counsel of record acting in a dual capacity and engaging in corrupt practices, as documented in state and federal appellate courts, withdrawing from the case on April 19, 1978, bringing suit against plaintiff on April 20, 1978 for counsel fees and then, in

lieu of any condemnation proceedings, engaged in "police power" tactics that the Attorney General's Office (Feingold, V., Assistant Attorney General) characterized in proceedings before Judge Dupont on June 7, 1982, page 12 as follows: "Your Honor, I am Victor Feingold, Assistant Attorney General. I have appeared before Your Honor on other motions, and in the past I have resisted any further order of the court which would direct the payment of any monies now in the custody of the court. I again object to any order of the court which would direct the clerk to disburse any of the funds now on deposit in the court. My reasons for the taking of this position are now being set forth by me today before Your Honor. I am now going to introduce a new element, which might affect the decision of Your Honor, and that is the jurisdiction of Your Honor to act on the motion of Mr. Allair and Mr. Valenti, who are seeking each independently an order for disbursement of funds."

"Now, the first point I want to make is that the basis for the deposit itself is found in a practice or procedure new to this state and not known to our practice."

The deposit to the court, without any written statements of compensation, without any proceedings initiated did not originate any civil actions and the treatise of *Karp v Urban Redevelopment Comm.*, 162 Conn. 525 at 527 is cited: [T]he docketing of the statement of compensation in the Clerk's Office of the Superior Court did not originate a civil action." *Simmons v State*, 160 Conn. 492, 494 n, 280 A2d 351. (A record of no record.)

Simmons v State cited, supra, involves the same subject property in which the Connecticut Supreme Court

ruled all actions of the State null and void in 1971, title reverted to plaintiff, property taxes were again being assessed against plaintiff and in 1974 while taxes are being paid to the Town of East Granby, Connecticut, the State enters into a lease (DOT-FA 74 NE-0369) with the Federal Aviation Administration, warranting on page 4, item #10 that: "The lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the government the rights and interests set forth herein."

Written demands (several) upon the F.A.A. to "PAY RENT" for the use of the property were countered with – "We have a lease from the State, your claim is against the State," and, when frustration took over, the final letter was "Pay rent – or – the middle market will end up in Long Island Sound – and it will not have a motor on it." The F.A.A. shielded its awkward position with "tampering with instrumentation is against the law."

Plaintiff's submission to Hon. Sheldon, M. in the impeachment proceeding relative to "final judgments" that was – disregarded – reads (Memorandum of Law on Jurisdiction, p. 10, 11/28/95):

FINAL JUDGMENT – 180 Conn. 587 (May, 1980)

An appeal to this court may be taken only from a final judgment. General Statutes § 52-263; Practice Book § 600; *Tough v Ives*, 159 Conn. 605, 606, 268 A2d 371; *Howarth v Northcott*, 152 Conn. 460, 462, 208 A2d 540. The absence of a final judgment goes to the *jurisdiction of the court*. Any appeal which is not from a final judgment must be rejected even though that issue has not been

raised by the parties. *Hoberman v Lake of Isles*, 138 Conn. 573, 574, 87 A2d 137.

The test whether a judgment is "final" in the sense that an appeal may be taken from it, lies not in its nature, for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties. *Banca Commerciale Italiana Trust Co. v Westchester Artistic Works, Inc.*, 108 Conn. 304, 307, 142 A 838.

The unlawful exercise of a power to which that property has been subject, is not conferred by Special Act #170 of the 1969 Connecticut General Assembly. When the language used in a statute (or Special Act) is clear and unambiguous, its meaning is not subject to modification by construction. *State v Simmons*, 155 Conn. 502, 504, 234 A2d 835; *Hurlbut v Lemelin*, 155 Conn. 68, 73, 230 A2d 36. It is not the function of the courts to read into clearly expressed legislation provisions which do not find expression in its words; *Lenox Realty Co. v Hackett*, 122 Conn. 143, 150, 187, 195, nor is it a court function to substitute its own ideas of what might be a wise provision in the place of a clear expression of legislative will. *Connelly v Bridgeport*, 104 Conn. 238, 249, 132 A 690. When legislation contains a specific definition, the courts are bound to accept that definition. *Danbury v Corbett*, 139 Conn. 379, 384, 94 A2d 6.

2. The opinions and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court where the want of jurisdiction of the Subject matter, or of the parties, or of the res, in an action in rem, be manifest from an inspection of the record, it will be regarded as a nullity by a formal and direct proceeding for its vacation or reversal.

Where the attachments, encumbrances of real property, for a federal project of navigational instrumentation under *Simmons v Wetherall* #163875, in lieu of any statute or the Constitution was an obvious and apparent defect, where the limits of authority were arbitrarily, maliciously, transcended, transmogrified and exceeded, where the encumbrances contained a citation at Vol. 59, p. 661-662 of Town of East Granby, Connecticut Land Records listing parties and institutions with a return day of the first Tuesday of July, 1978, and no return was ever made to the Superior Court of competent jurisdiction, where no just compensation has been ascertained or paid for more than three (3) decades of "bumbling," the validity of a proceeding of, or an authority exercised under a private tort action for eminent domain purposes in behalf of a federal agency (F.A.A.) that is repugnant to the Constitution, treaties, or laws of the United States, may be reexamined and reversed or affirmed in the Supreme Court of the United States upon a motion for impeachment.

It cannot be disputed that an improper return day affects the court's jurisdiction. *Hartford National Bank & T. Co. v Tucker,* 178 Conn. 472, 478-79, 423 A2d 141 (1979) cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed 2d 319 (1980).

Where it appears on the face of the record that the process was not returned not later than six days before the return day in accordance with mandatory statutory requirements, where it is admitted, acknowledged by the Attorney General's Office there was no sheriff service upon any necessary parties, where the only listing of Augustus J. Simmons, the owner, is in the citation as plaintiff, but, intentionally and maliciously not included for service in the citation, with other parties and institutions was a mistake, ? fraud, ? actual intent of purpose to defraud, ? is just and proper cause to have the attachment proceeding, "cloud," quashed, stricken, ruled null and void.

The factor which is perhaps the most important for determining if the eminent domain authority has been abused is the amount of time between the initiation of not one but two (2) previous condemnation attempts that the Connecticut Supreme Court ruled null and void for failure to proceed under the "prescribed method of taking," and then, render a decision under *Simmons v Wetherall,* 180 Conn. 587, with the unconstitutional inhibitions on the Land Records that are in direct conflict with the public policy promulgated by the Connecticut Department of Transportation, in direct conflict with applicable and controlling federal regulations promulgated pursuant to the Uniform Real Property Acquisition Act, P.L. 91-646, as amended, rendered with full and complete knowledge that the decision transcended the intent and purpose of *Simmons v Wetherall,* #163875, could not conclude the acquisition of a "satisfactory property interest" as defined in 14 C.F.R. § 152.3 of federal regulations, nor could it

satisfy the requirement of just compensation that is constitutionally guaranteed. What the Supreme Court of Connecticut did do was contribute to the delay and prolong matters using economic coercion as a weapon to the degree that multiple lienholders remain on the Land Records as this impeachment action is proceeding through the courts against an action that is unconscionable, unlawful and unconstitutional, acting on a judgment which is absolutely void for want of jurisdiction where the claim and proof is: not false service, not defective service, VOID for lack of *any* service.

Such an enactment would not receive judicial sanction in any country having a written constitution distributing the powers of government among three coordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such constitution. It would be treated not as an exertion of legislative power, but as a sentence – an act of spoliation. (Quoted from *Chicago, Burlington & C. R'd v Chicago,* 166 U.S. at p. 235. Cited in *Davidson v New Orleans,* 96 U.S. 97, 102; also *Missouri Pacific Railway v Nebraska,* 164 U.S. 403.

3. The opinions and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court in the arbitrary, discriminatory and fraudulent "freezing" of plaintiff's real property, without actual condemnation in violation of the due process clause of the Fourteenth Amendment.

As was said by the court in *Galpin v Page,* 18 Wall 350: "It is a rule as old as the law and never more to be

respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression and never can be upheld where justice is justly administered. Judgment without jurisdiction is unavailing for any purpose."

Again, as was announced by the same court in *Voorhees v Bank*, 10 Pet 475: "The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record importing absolute verity; in the other mere waste paper."

In the same case the court further observed: "The general and well-settled rule of law in such cases is that, when the proceedings are collaterally drawn in question, and it appears on the face of them that the subject matter was within the jurisdiction of the court, they are voidable only. The errors and irregularities, if any exist, are to be corrected by some direct proceeding, either before the same court to set them aside, or in an appellate court. If there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right and afford no justification, and may be rejected when collaterally drawn in question." The Supreme Court of the United States in

Pennoyer v Neff, 95 U.S. 714, held that a personal judgment rendered in a state court, in an action upon a money demand against a non-resident of a state, without personal service of process upon him within the state, or his appearance in the action is without any validity; and no title to property passes by a sale under an execution issued upon such a judgment. In delivering the opinion of the court in this case, Mr. Justice Field said: "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law."

In the case at bar, the record discloses that said eminent domain judgment, that was not by or from a court of competent jurisdiction, was rendered under plaintiff's tort action, (Docket #163875), there not being any eminent domain action in existence or initiated for judgment purposes. It therefore appears by the record itself that the private parties, when it rendered said judgment, had no jurisdiction of either the property or the person of the defendant. That it had no jurisdiction of his property is expressly shown by no sheriff's return and no docketing of any such judgment by the clerk of the Superior Court. That it had not, and could have not, none of the parties, appears by necessary implication with no sheriff's return.

Where the writ of attachment (confiscation) was made upon an action brought by plaintiff pursuant to the

waiver of sovereign immunity (Docket #163875), superimposing the Connecticut Department of Transportation as plaintiff, without mandatory appraisals, without statutory authority or jurisdiction, without notice to necessary parties, without actual condemnation, without any written statements of compensation, without any motions or proceedings under Docket #163875, and, where the lack of relation between the relief demanded (monetary damages) and the action taken was cause for dismissal of private counsel, prior to any judgments – yet – it was said that under this legislative enactment declaring in terms, without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in another person (State of Connecticut), would, if effectual deprive the former of his property without due process of law within the meaning of the Fourteenth Amendment, without constitutionally mandated compensation made or adequately secured to the owner of private property taken for public airport use under the authority of a state.

Such a judgment, when collaterally drawn in question, may be disregarded and treated as a nullity, and need not be adjudged to be such by a formal and direct proceeding. *Coit v Haven*, 30 Conn. 190; *Folger v Slaughter*, 33 La. Ann. 342; *Settlemeir v Sullivan*, 97 U.S. 444; *Eaton v Badger*, 33 N.H. 228; *Wall v Wall*, 123 Pa. St. 545, 16 Atl. Rep. 598; *Frankel v Satterfield*, Atl. Repr. 19-898.

THE DECISION BELOW IS INCORRECT

The decision below is incomplete derogation of the just compensation and due process clause of the Fifth and Fourteenth Amendments and represents conflicts with every other circuit. *Pennoyer v Neff*, 95 U.S. 714; *Windsor v McVeigh*, 93 U.S. 274, 282.

The Connecticut Supreme Court had occasion to discuss the principle of judgments not conforming to pleadings, issues, and prayers for relief in *New Haven Sandblast Co. v Dreisbach*, 104 Conn. 322, 330, 133 A 99 and stated:

A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet I cannot doubt that, upon general principles, such a defect must avoid judgment.

133 A at 102 (citation omitted). The court also stated, quoting *Black on Judgments* (2d Ed) Vol. I § 215:

Besides jurisdiction of the person of the defendant and of the general subject matter of the action, it is necessary to the validity of the judgment that the court should have had jurisdiction over the precise question which its judgment assumes to decide, or of the particular remedy or relief which it assumes to grant * * * and third, the point decided must be in substance and effect, within the issue.

It is significant that in *New Haven Sandblast Co.*, supra, the court was asked to issue a ruling based upon stipulated, rather than actual facts. The court expressly found that

the agreement of the parties was not sufficient to constitute a waiver and could not "confer jurisdiction upon one trial court."

CONCLUSION

In its last analysis, this case reduced itself to the plain proposition that no man can be deprived of his property without notice and an opportunity to be heard. We may call the attempt to do this FRAUD, or we may say it was a MISTAKE; but the result is the same – a judgment claimed to be binding against known owners of an interest in the land, who were not made parties or served with summons, and who had no actual notice of the suit is, ipso facto, a NULLITY.

Respectfully submitted,

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APPENDIX

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APPENDIX – A

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APPENDIX A

April 18, 1996

Chief Clerk
Supreme Court of Connecticut
Hartford, CT 06106

RE: *Simmons v Wetherall,*
Docket #163875

Dear Chief Clerk:

Pursuant to Section 4024 of the Practice Book, appellant, Augustus J. Simmons, requests for consideration of transfer to the Supreme Court the denial of impeachment by Hon. Michael R. Sheldon of the action/inaction of the above entitled docketed case.

Reasons for transfer is that this *"1970"* tort action has never been addressed, was illegally, unlawfully and unconstitutionally transformed into an eminent domain action resulting in extreme and cruel hardship on appellant, which cannot be resolved by the lower court.

All *"airport"* questions are of great public importance, particularly where the federal agency (F.A.A.) is involved, as in the case at bar.

This docket number (#163875) has previously been before the Supreme Court of Connecticut, (*Simmons v Wetherall,* 180 Conn. 587 (1980)).

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095

APPENDIX B

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-95-0335

Augustus J. Simmons

v.

Horace B. Wetherall et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (AC 15481), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

Dated: June 17, 1996
Notice sent: 6/17/96
Clerk, Superior Court, Hartford/New Britain at Hartford 163875S
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Augustus J. Simmons, pro se
Witt & Associates
Arnold K. Shimelman, Assistant Attorney General
Rogin, Nassau, Caplan, Lassman & Hirtle

Augustus J. Simmons, pro se in support of petition: *Arnold K. Shimelman,* Assistant Attorney General, in opposition.

APPENDIX C

AC 15481		
AUGUSTUS J. SIMMONS	:	APPELLATE COURT
V.	:	STATE OF CONNECTICUT
HORACE WETHERALL ET AL.	:	JUNE 20, 1996

ORDER

After a hearing on May 1, 1996, why sanctions pursuant to §4184 (1) should not be imposed on Otto P. Witt for failure to comply with rules and orders of the court, it was ORDERED that Otto P. Witt is prohibited henceforth from filing any papers in this court and from making an appearance in this court for a period of six months from this date. After that period, and upon the payment of a $100.00 fine payable to the Clerk of the Appellate Court, Attorney Witt may resume practice before this court if he is otherwise qualified to practice law in the courts of this state.

By the Court,

/s/ Francis J. Drumm, Jr.
Francis J. Drumm, Jr.
Chief Clerk

Notice: June 20, 1996
Otto P. Witt
Rogin, Nassau, Caplan, Lassman & Hirtle, L.L.I.
Arnold Schimelman, Assistant Attorney General
Augustus J. Simmons, pro se
Hartford Superior Court (CV700163875S)
Daniel B. Horwitch, Statewide Grievance Committee

APPENDIX D

PETITION TO SUPREME COURT FOR CERTIFICATION FOR REVIEW

DOCKET # 163875

AUGUSTUS J. SIMMONS

VS

HORACE B. WETHERALL, et al

To the honorable chief justice and associate judges of the Supreme Court.

The undersigned respectfully represents:

1. He is a party plaintiff in the above entitled action.

2. He is aggrieved by the decision of the court, Hon. Sheldon, Michael R., upon questions of law arising in the trial of the action, and desires to appeal from the final judgment to the Supreme Court pursuant to Section 4024 of the Practice Book.

3. A motion by plaintiff to correct transcript was duly filed with the court in timely fashion, has been unduly delayed with the filing for sanctions against plaintiff's counsel, Otto Witt, Esq. (AC 15481) by defendant-appellee Arnold Shimelman, Assistant Attorney General, and the nature of the corrections requested are/were matters that would not significantly alter the questions presented for review, thus, for purposes of expediency, plaintiff hereby waives corrections to the transcripts.

4. Plaintiff's counsel, Otto Witt, Esq., who filed an appearance in this matter on December 26, 1995, is presently out of the country (Germany) and the memorandum of law on jurisdiction applicable to the case at bar was filed, pro se, with Honorable Michael Sheldon on November 28, 1995.

Plaintiff elects to proceed under the memorandum of law, of and by the plaintiff for just compensation in accord with the promulgated regulations.

5. Relative to sanctions against plaintiff and plaintiff's counsel, where the court of competent jurisdiction does not have jurisdiction of the subject matter or the parties and there was not any eminent domain proceedings' initiated by the state, and, the court of competent jurisdiction cannot pay just compensation to lienholders, who must be paid first (C.G.S. 48-21), with no proceedings before the court amounts to – high powered coercion and harassment, a denial of due process, sanctioning the violation of federal and state law, and, economic coercion in violation of 49 CFR § 24.102(h).

QUESTIONS PRESENTED FOR REVIEW

A. Whether the State of Connecticut, Department of Transportation, – shall – comply with federal real property acquisition procedures, 42 U.S.C. §§ 4655 and 4651 in obligation with a United States of America Grant Agreement (9-06-009-5708-(1955)) for real property acquisition upon which federal airport navigational instrumentation has been imposing a servitude upon the private landowner, without compensation.

[In relevant part, those provisions require the grant recipient to attempt to acquire the real property interest through negotiations with the landowner, during which the grant recipient must offer the landowner the *full appraised value* of the interest.]

B. Whether certification for review should be granted in the most recent "Motion For Impeachment" filed by plaintiff under plaintiff's private tort action, *Simmons v Wetherall*, #163875, that attacks attachments, encumbrances, garnishment on the Land Records of the Town of East Granby, Connecticut, submitted under the caption of *Simmons v Wetherall*, #163875, that is without jurisdiction, i.e., without legal service of process, without any written statements of compensation to the owner, the court, the Town Clerk as mandated by C.G.S. 8-129.

[In relevant part, a state court obtains jurisdiction of the action and of questions concerning the garnishment when return of process is made to that court.] I. E. Stephenson, Connecticut Civil Procedure (2d Ed. 1970), supra at 67.

Where the lack of notice, lack of service was shown by evidence that dehors the judgment, the validity of such judgments may be directly questioned and their enforcement in the state resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law under the Fourteenth Amendment to the Federal Constitution.

C. Whether certification should be granted where plaintiff was seeking monetary damages under Art. First

§ 11 of the Connecticut Constitution and Special Act #170 (Docket #163875) for "bumbling" by the State against two (2) previous null and void condemnations, and, a further taking of private property by the state for *highway* purposes (Parcel D - 1.12 acres) (Map Book 12, p. 854) was filed upon the Land Records of the Town of East Granby, Connecticut on June 2, 1978, without any assessment filed with the clerk of the Superior Court as required by General Statute § 13a73(b), was a continued, perpetuation of the unconstitutional seizure of private property – without compensation.

[In relevant part, courts clearly have the power to provide a remedy for a taking without compensation.] *United States v Lee,* 106 U.S. 196, 220, S. Ct. 240, 27 L.Ed 171; *Hooker v New Haven & Northampton Co.,* 14 Conn. 146. Where statutes provide an efficacious procedure for assuring just compensation, that procedure will be followed. *Thompson v New Haven,* 100 Conn. 604, 124 A 247; 6 Nichols, Eminent Domain (3d Ed), p. 594 § 28.11.

D. Whether certification should be granted where plaintiff was seeking monetary damages under Article First § 11 of the Connecticut Constitution and Special Act #170 (Docket #163875) for "bumbling" by the State against two (2) previous null and void condemnations, and, a further taking of private property by the state for *airport* purposes (Parcel A - 2.2. acres) (Map Book 12, p. 853) was filed upon the Land Records of the Town of East Granby, Connecticut on June 2, 1978, without any appraisals as mandated by federal and state law, without any written statements of compensation as mandated by federal and state law and C.G.S. 13b50, sec. (d), was a

continued perpetuation of the unconstitutional seizure of private property – without compensation.

[In relevant part, the applicable and controlling federal regulation (49 C.F.R. § 24.102(d) requires: "Before the initiation of negotiations, the agency shall establish an amount which it believes is just compensation for the real property. The amount – *SHALL – NOT* be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation."]

E. Whether the lower court (Hon. Sheldon, Michael R.) erred in refusing plaintiff the privilege and right of putting FRAUD, COLLUSION, COERCION and BAD FAITH by plaintiff's own attorneys (Attys. Edward Rogin, Sr. and Robert Hirtle, Jr.), who acted in concert with the State Transportation Department, before the court with the statement: (Trans. 11/6/95, page 1) "There are very serious charges that I intend to level in addition to what I have in the file." In response – The Court: "No, we're not going to try anybody."

[In relevant part, 49 C.F.R. § 24.102(h) COERCIVE ACTION, reads: The agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.]

F. Whether the garnishment on the Land Records at Vol. 59, p. 624 with a "dating back" to November 12, 1964,

with no court stamp on the document, was unconstitutional and fraudulent, and, made with the stated intent to "avoid legislation enacted after this controversy started." (Trans. 12/13/77 p. 2)

[In relevant part, where the Connecticut Supreme Court ruled in 160 Conn. 492 (1971) that all actions of the state were – null and void – and by judgment, title reverted to plaintiff on the Land Records at Vol. 52, p. 242, 243, on March 24, 1972, such bizarre contradiction of its own decisions by the Connecticut Supreme Court warrant review.]

G. Whether the lower court erred in disregarding the issue of subject matter jurisdiction and jurisdiction of the parties that was clearly addressed before Hon. Dupont, A., on June 7, 1982, was admitted as plaintiff's Ex. #4 (Trans. 11/6/95, p. 37) and can never be waived.

[In relevant part, the court, Hon. Sheldon, M. R., at page 66 of transcript of December 4, 1995 states: – "There is absolutely no reason why the court at this time should entertain any subject matter jurisdiction challenge because the right to do so, in the interest of finality, has long ago been waived and there are no strong reasons of policy to suggest that it should be done at this point in time."]

H. Whether the lower court erred in disregarding the deliberate, intentional, malicious violations of federal and state law by plaintiff's counsel (Attys. Rogin, Sr. and Hirtle, Jr.) who, in concert with the Department of Transportation, create a self-serving slush fund that is tapped for $95,600 in legal fees, plus $18,014.49 interest for a total of $113,614.49 without notice to and the exclusion of

multiple lienholders with priority rights, who, to date have not been cleared off the Land Records.

[In relevant part, where plaintiff's exhibit #2, a written dismissal notice was submitted to the law firm on December 23, 1977; where police power antics were relied upon on January 4, 1978 against Robert King, Esq. of Vernon, Connecticut from representing plaintiff on January 4, 1978; where an additional dismissal notice was submitted, in writing, on April 12, 1978; where all counsel signed a withdrawal notice (five attorneys) and submitted same to plaintiff on April 19, 1978 for failure to secure deeds; and, where the following day (April 20, 1978) had the sheriff serve plaintiff with a P.J.R. for counsel fees, putting an additional encumbrance on the Land Records at Vol. 59, p. 519 in the Town of East Granby, Connecticut (Trans. 12/4/95 p. 6, 20), when the intent, obligation, as referenced in Section A was to acquire a "satisfactory property interest" per 14 C.F.R. 152.3 for the Federal Aviation Administration, a clear title free of liens, encumbrances – CANNOT – be accomplished with the null and void attachments, presently on the Land Records.]

BASIS FOR CERTIFICATION

1. The refusal of the Superior Court, Hon. John Daly, to distribute funds to plaintiff's – former – counsel (Rogin-Hirtle) as depicted in an exhibit (A-1 and A-2) attached to plaintiff's "Answer to Objection to Impeachment" dated September 7, 1995 was "based on *Shelton v Wolthausen*, 80 C 599, furnished by Lucian. I would have no authority to grant this motion. Will you kindly notify

Jason Pearl regarding this and if he wishes to argue the matter put it down." By Hon. John Daly on August 30, 1979.

This denial *preceded* the Connecticut Supreme Court decision of *Simmons v Wetherall,* 180 Conn. 587 (1980).

80 C 599 reads clearly that: Where money is paid into court in an action to determine its ownership, it is in the custody of the law, and is to be disposed of only through the medium of proceedings had in or relating to that cause.

2. The denial by the Superior Court, Hon. Dupont, A., to distribute funds to Allaire-Valente, lienholders on Parcel C on June 7, 1982 – *AFTER* the Supreme Court decision of *Simmons v Wetherall,* 180 Conn. 587 (1980) is part of the record.

Reasons for refusal was a challenge of subject matter jurisdiction of the Superior Court by the Attorney General's Office and a statement to the court that there was no notice, no process of service on Valente or Allaire or counsel representing them. Transcript of proceedings of June 7, 1982 was submitted as Ex. #4 before Hon. Sheldon, M. on November 6, 1995, page 37.

3. The record is unambiguously clear that plaintiff submitted a written dismissal upon the Rogin-Hirtle law firm on December 23, 1977 for engaging in "corrupt practices," one of which, stated in the dismissal, was "failure to procure a market research study" (appraisals) prior to negotiations that are mandatory under federal and state law. A copy of the "corrupt practices" letter addressed to the Clerk of the Court of Appeals, 2nd Circuit, dated

March 5, 1996, has been made part of the file in Docket #163875.

4. The record is unambiguously clear that after plaintiff told private counsel Rogin-Hirtle (acting as a court with a court reporter present) in their private offices on April 19, 1978 that "there will be no goddamn closing with a dating back to 1964," all counsel submitted a written withdrawal and on April 20, 1978, the sheriff served plaintiff with a P.J.R. for attorneys fees and recorded same on Land Records at Vol. 59, p. 519 in Town of East Granby, Connecticut.

5. The record was made unambiguously clear before Hon. Sheldon, M., that Vol. 59, p. 661, 662 contained a citation listing parties and institutions (excluding the owner, Augustus J. Simmons) with a return day of the first Tuesday of July, 1978, upon whom no process of service was ever made and very obviously no return of service ever appeared on the Superior Court records.

6. *Simmons v Wetherall*, #163875, was a private tort action against the state and cannot be transformed into an eminent domain action on behalf of the State. See *Standard Oil Co. v Missouri*, 32 S. Ct. at 409.

SUMMARY OF THE CASE

1. In violation of the due process clause of the Fifth and Fourteenth Amendments of the Constitution, Attorneys Rogin-Hirtle, in concert with the Connecticut Department of Transportation, by their acts committed an unconstitutional "FREEZING" of plaintiff's real property, without instituting any proceedings, without payment of

just compensation, resulting in a deprivation with a "cloud" that is unreasonable, unconscionable, and where a property owner has been, for decades, prevented from using it for any income – producing purpose, several State Supreme Courts have found such acts unconstitutional under U.S.C.A. Five and Fourteen. See *Maryland Park v Chadwick*, 286 Md. 1, 405 A2d 241 (Md. 1979); *Jensen v City of New York*, 42 N.Y. 2d 1079, 399 N.E. 2d 645, 369 N.E. 2d 1179 (1979); *Charles v Diamond*, 41 N.Y. 2d 318, 392 N.Y.S. 2d 594, 360 N.E. 2d 1295 (1977); *Fred F. French v City of New York*, 39 N.Y. 2d 587, 385 N.Y.S. 2d 5, 350 N.E. 2d 381 (1976).

ARGUMENT

1. Whether by *PURCHASE, LEASE, EXCHANGE, GIFT,* or in the exercise of *EMINENT DOMAIN,* the *ONLY* procedural statute applicable, after the prerequisites under the laws of the United States have been satisfied, is Conn. Gen. Statute 8-129, and where the "jurisdictional facts" for subject matter jurisdiction require:

a) Filing a statement of compensation.

b) Naming of all persons having a record interest therein.

c) Give notice to each person of record as holder of liens, etc.

d) Service upon each person as set forth in C.G.S. § 52-57.

e) Not less than 12 days nor more than 90 days after service, a return of notice shall be filed with the Clerk of Court.

f) Clerk of Court to issue a Certificate of Taking setting forth property taken, and names of owners and all other persons having a record interest therein.

g) Certificate of Taking to be recorded in office of Town Clerk.

h) Upon such recording, right to compensation shall vest in the persons entitled thereto.

i) Any decree (purported judgment) rendered without proof of such filing, notice, and return of notice is *VOID* ab initio.

As was said by the court in *Galpin v Page,* 18 Wall. 350: "Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression, and never can be upheld where justice is justly administered. * * * Judgment without jurisdiction is unavailing for any purpose."

Wherefore, the undersigned requests that the Supreme Court certify this matter for review.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

I hereby certify that the foregoing petition presents a substantial question meriting certification, and that it is filed in good faith and not for purposes of delay.

Dated at Hartford, Connecticut
This 16 day of May, 1996.

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

In the above entitled matter certification is ___ Granted ___ Denied

By the Court

_____
Chief Clerk

CERTIFICATE OF SERVICE

This petition presents a substantial question meriting certification and that it is filed in good faith and not for purposes of delay. I hereby certify that a copy of the foregoing petition was served by first class mail on this 16 day of May, 1996 on:

Arnold K. Shimelman,
Assistant Attorney General
2800 Berlin Turnpike
P. O. Box 317546
Newington, CT 06131-7546

{Edward S. Rogin, Sr., Esq.
{Robert Hirtle, Jr., Esq.
Rogin, Nassau, Caplan, Lassman & Hirtle
CityPlace
Hartford, CT 06103

Otto Witt, Esq. & Associates
185 Silas Deane Hwy.
Wethersfield, CT 06109

And a copy was hand delivered to:

Clerk of Court
Hartford Judicial District
95 Washington Street
Hartford, CT 06106

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

PARTIES TO THE APPEAL

Appellant: Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095

Counsel for Appellant:
Otto Witt, Esq. & Associates
185 Silas Deane Hwy.
Wethersfield, CT 06109

Appellee: State of Connecticut (Department of Transportation)

Counsel for Appellee:

Arnold K. Shimelman,
Assistant Attorney General
2800 Berlin Turnpike
P. O. Box 317546
Newington, CT 06131-7546

Other: Counsel for Appellant from December 13, 1977 to April 19, 1978 – Process of Service made on each prior to filing motion with the court on August 1, 1995
{Edward S. Rogin, Sr., Esq.
{Robert Hirtle, Jr., Esq.
Rogin, Nassau, Caplan, Lassman, & Hirtle
CityPlace
Hartford, CT 06106

APPENDIX

Decision of Hon. Michael R. Sheldon dated December 6, 1995 i

Preliminary Statement of the Issues ii

Designation of Contents of Record iii

Docketing Statement iv

Settlement Material v

Transcripts (2) Nov. 6, 1995; Dec. 4, 1995

SIMMONS, AUGUSTUS J. VS.
WETHERALL, HORACE CV-70-0163875-S

RE =233.00, MOT FOR ORDER OF IMPEACHMENT

ORDER DENIED, FOR REASONS STATED
ON THE RECORD IN OPEN COURT, AFTER
ORAL ARGUMENT ON
DECEMBER 4, 1995.

SHELDON, J.
DALE VARANO, TAC
12/6/95

AUGUSTUS J SIMMONS
PO BOX 1
WINDSOR, CONNECTICUT
06095

SUPERIOR COURT
95 WASHINGTON STREET
P.O. DRAWER D, STATION A
HARTFORD, CONNECTICUT 06106

DATED DEC 06, 1995
HHD

(Sup. Ct. No. CV 70 0163875 S)	:	APPELLATE COURT
AUGUSTUS J. SIMMONS	:	DECEMBER 26, 1995
VS.	:	
HORACE WETHERELL, ET AL	:	

PRELIMINARY STATEMENT OF ISSUES

The appellant intends to present the following issues on this appeal:

1. Whether the Court erred in refusing to reopen judgment entered without jurisdiction over the subject matter;

2. Whether the Court erred in refusing to reopen judgment which was entered fraudulently;

3. Whether the Court erred in refusing to reopen judgment which was entered in violation of federal and state law;

4. Whether the Court erred in refusing to schedule a hearing in damages where land was taken without any compensation;

5. Whether the Court erred in refusing to set aside judgments recorded on the land records without service of process;

6. Whether referee exceeded his authority in consolidating cases and reopening judgments that were never assigned to him.

7. Whether the referee erred in backdating title to land to contravene Federal and State law with respect to taking land for airport purposes.

8. Whether the purported judgment in this case is void becasue [sic] of failure of the State to comply with said judgment.

PLAINTIFF/APPELLANT
AUGUSTUS J. SIMMONS

By /s/ Otto P. Witt
Otto P. Witt
Witt & Associates, P.C.
185 Silas Deane Highway
Wethersfield, CT 06109
(203) 257-1985
Juris No. 409497

CERTIFICATION

I hereby certify that a copy of the foregoing Preliminary Statement of Issues was served by first class mail on:

Arnold K. Shimelman, Asst. Attorney General
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Rogin, Nassau, Caplan, Lassman, & Hirtle
CityPlace I
Hartford, CT 06103

this 26th day of December 1995.

/s/ Otto P. Witt
Otto P. Witt

(Sup. Ct. No. CV 70 0163875 S)	:	APPELLATE COURT
AUGUSTUS J. SIMMONS	:	DECEMBER 26, 1995
VS.	:	
HORACE WETHERELL, ET AL	:	

DESIGNATION OF CONTENTS OF RECORD

The appellant hereby designates the following parts of the file which he deems necessary to include in the printed appeal record:

1. Original Complaint dated (docket no., filed January 5, 1970);

2. Stipulation to refer to referee (docket no. 116-50, filed 6/16/76;

3 Motion to consolidate (docket no. 120-25 filed December 13, 1977);

4. Judgment for plaintiff by stipulation (docket no 121-00 filed January 4, 1978);

5. Stipulation to reopen (docket no. 123 filed January 4, 1978);

6. Motion to reopen judgment (docket no. 124-60 filed June 1, 1978);

7. Supplemental Judgment (docket no. 127-00 file June 2, 1978);

8. Motion for Order (docket no. 233-00, filed August 1, 1995);

9. Objection to Motion (docket no. 234-00, filed August 14, 1995);

10. Defendant's Memorandum (docket no. 236-00, filed November 22, 1995);

11. Plaintiff's Memorandum (docket no. 237, filed November 28, 1995);

PLAINTIFF/APPELLANT
AUGUSTUS J. SIMMONS

By /s/ Otto P. Witt
Otto P. Witt
Witt & Associates, P.C.
185 Silas Deane Highway
Wethersfield, CT 06109
(203) 257-1985
Juris No. 409497

CERTIFICATION

I hereby certify that a copy of the foregoing Designation of Contents of Record was served by first class mail on:

Arnold K. Shimelman, Asst. Attorney General
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Rogin, Nassau, Caplan, Lassman, & Hirtle
CityPlace I
Hartford, CT 06103

this 26th day of December 1995.

/s/ Otto P. Witt
Otto P. Witt

(Sup. Ct. No. CV 70 0163875 S)	:	APPELLATE COURT
AUGUSTUS J. SIMMONS	:	DECEMBER 26, 1995
VS.	:	
HORACE WETHERELL, ET AL	:	

DOCKETING STATEMENT

I. Parties to appeal:

Appellant/Plaintiff: Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Attorneys for Appellant:	Witt & Associates, P.C. 185 Silas Deane Highway Wethersfield, CT 06109 (203) 257-1985
Appellees:	State of Connecticut, Dept. of Transportation Rogin, Nassau, Caplan, Lassman, & Hirtle
Attorneys for Appellees:	Arnold K. Shimelman, Asst. Attorney General 2800 Berlin Turnpike P.O. Box 317546 Newington, CT 06131 Rogin, Nassau, Caplan, Lassman, & Hirtle CityPlace I Hartford, CT 06103

II. There are no related cases pending on appeal.

III. There were exhibits introduced at hearing on the motion.

PLAINTIFF/APPELLANT
AUGUSTUS J. SIMMONS

By /s/ Otto P. Witt
Otto P. Witt
Witt & Associates, P.C.
185 Silas Deane Highway
Wethersfield, CT 06109
(203) 257-1985
Juris No. 409497

CERTIFICATION

I hereby certify that a copy of the foregoing Docketing Statement was served by first class mail on:

Arnold K. Shimelman, Asst. Attorney General
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Rogin, Nassau, Caplan, Lassman, & Hirtle
CityPlace I
Hartford, CT 06103

this 26th day of December 1995.

/s/ Otto P. Witt
Otto P. Witt

APPELLATE COURT

STATE OF CONNECTICUT

AC 15481

Augustus J. Simmons

v.

Horace Wetherall et al.

March 20, 1996

ORDER

After hearing on the question why sanctions, including the dismissal of this appeal, should not be imposed for failure to comply with the Appellate Court's order of

April 3, 1992 in AC 10918, it is hereby ordered sua sponte that the appeal be dismissed.*

*F. Hennessy, J., is recused

By the Court,

/s/ Carolyn C. Zirgas
Assistant Clerk-Appellate

Notice: March 20, 1996
OTTO P. WITT
ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE, L.L.I.
ARNOLD SHIMELMAN, A.A.G.
HON. MICHAEL R. SHELDON
HARTFORD J.D., (CV70-0163875S)
TOPAC
ct

APPENDIX E

NO. A.C. 10918

AUGUSTUS J. SIMMONS	:	APPELLATE COURT
v.	:	STATE OF CONNECTICUT
HORACE B. WETHERELL ET AL.	:	APRIL 3, 1992
	:	

ORDER

THE MOTION OF THE DEFENDANT-APPELLEE STATE OF CONNECTICUT, FILED JANUARY 31, 1992, FOR SANCTIONS, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

PER ORDER OF THE APPELLATE COURT, THE PLAINTIFF, AUGUSTUS J. SIMMONS, IS HEREBY ENJOINED FROM FILING ANY APPEALS OR OTHER PLEADINGS IN THIS COURT CONCERNING THE SAME CLAIMS AS THOSE WHICH HAVE BEEN LITIGATED OR MIGHT HAVE BEEN LITIGATED, IN THE CONNECTICUT SUPERIOR COURT CASES REFERRED TO AS SIMMONS v. WETHERELL, DOCKET NO. 163875 (SUPERIOR COURT AT HARTFORD, JAN. 4. 1978, AS MODIFIED JUNE 2, 1978), AFF'D 180 CONN. 587 (1980), AND ALL THE CASES CONSOLIDATED THEREWITH, INCLUDING ANY CLAIMS OF ALLEGED HARM RELATING TO THE PLAINTIFF'S OWNERSHIP, AT ONE TIME, OF THE PARCELS OF LAND IN THE TOWN OF EAST GRANBY AS DESCRIBED IN THE ORIGINAL AND SUPPLEMENTAL JUDGMENTS IN SIMMONS v. WETHERELL, DOCKET NO. 163875, *SUPRA*, AND ALL CASES CONSOLIDATED THEREWITH.

NOTHING IN THIS ORDER SHALL BE CONSTRUED TO DENY PLAINTIFF ACCESS TO THE CONNECTICUT SUPREME COURT OR TO THE UNITED STATES SUPREME COURT REGARDING THIS COURT'S ACTIONS CONCERNING THIS MATTER.

BY THE COURT,

ASSISTANT CLERK – APPELLATE

APPENDIX F

(LOGO) Cleveland Legal Blank Service, Inc.
Hartford, Connecticut

Town Clerk's Certificate for Copies of Record.

OFFICE OF TOWN CLERK,
TOWN OF EAST GRANBY

STATE OF CONNECTICUT)
) ss.
COUNTY OF HARTFORD)

I, Miriam W. Viets Town Clerk of said Town, duly elected and qualified according to law and having custody of the seal of the said Town, hereby certify that the annexed instrument is a true copy from the Land Record of said Town, and that the original instrument from which said copy is taken is recorded on Page 657-668 of Volume 59

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Town, this 5th day of August, A.D., 1981

/s/ Miriam W. Viets
Town Clerk of
EAST GRANBY

NO. 163875

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
V.	:	HARTFORD COUNTY
HORACE B. WETHERELL, ET AL	:	JUNE 2, 1978
	:	

Present: Hon. Louis Shapiro, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons v. Samuel Kanell, et al.; and
No. 162923	Augustus J. Simmons v. Frank C. Parizek et al.;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a stipulation for judgment and judgment dated January 4, 1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligations in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$20,000
55/690	A	Jerome H. Diamond	Mod. of Mtg.	6/20/74	—
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97

57/426	ABC	Htfd. Nat'l Bank	Attach.	6/21/76	$ 2,625.00
58/95	C	Lenard Allaire, et al	Judg.	3/15/77	$11,104.00
58/221	C	Patsy Valente, et al	Attach	4/28/77	$ 3,000.00
58/301	A	Angelo Roncari	Lse.	5/24/77	___
59/253	C	Patsy Valente, et al	J/L	3/7/78	$ 2,490.00
59/263	C	Patsy Valente, et al	L/P	3/13/78	$ 3,000.00
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/283	Portion of Parcel A	Westside Vallet [sic] Parking, Inc.	Lse.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto,

together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29/from the sum deposited.

4) That pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet [sic] Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Pasty [sic] Valente, Westside Vallet [sic] Parking, Inc., David B.

Salzman, and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney – 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forty-Six One-Hundredths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Four One-Hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said panel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road – Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer – Bureau of Highways January, 1978",

which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet, more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing

Property of Dept. of Transportation of The State of Connecticut Rainbow Road – Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer – Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17a Sheet 2 of 2", which map is on file in the Town Clerk's Office is said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby – Map showing property of Augustus J. Simmons – Rainbow Road – Route 20 – Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons covenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Right of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the

"Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

And I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters,

and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
) ss
Hartford County)
[SEAL]

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

In TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court. at Hanford, in said County, this 5th day of June _____, 1978

/s/ Thomas H. Abraham, CLERK.

Received June 5, 1978 at 4:01 P.M. by Marilyn L. Barstow Asst. Town Clerk.